

December 3, 2003



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in MB Docket No. 03-172

Dear Ms. Dortch:

On December 2, 2003, Harold Feld, Associate Director, MAP, met with Jordan Goldstein, legal adviser to Commissioner Copps, on behalf of the Association of Independent Video and Filmmakers (AIVF).

Mr. Feld reiterated AIVF's position that Section 612(g) authorized the Commission to require cable networks to show credits of all independent programmers that contributed to a particular show. Mr. Feld reported that a number of AIVF members have complained that they have not received adequate screen credit for their work, with the result that their ability to participate in the market as independent programmers suffers.

Mr. Goldstein asked whether DBS subscribers could be considered as part of the 70/70 calculus. Mr. Feld replied that the Commission had found that the terms "cable subscribers" and "cable systems" in Section 613(f) applied to DBS subscribers, and that therefore the term "cable systems" should have the same meaning in Section 612(g). Mr. Feld also suggested that the Commission should require submission of relevant data, rather than relying on uncertified data from industry sources with incentive to find that the 70/70 conditions are not met.

With regard to the report generally, Mr. Feld observed that three successive GAO reports had criticized the FCC's Video Competition Report methodology as unreliable. The GAO further found that the cable market was not competitive and that DBS did not provide adequate competition to cable. Mr. Feld also noted that the Commission's order approving the merger of AT&T and Comcast had found that RCN and others had submitted credible evidence suggesting that Comcast and AT&T had engaged in various anticompetitive practices. *In re Transfer to AT&T Comcast*, ¶¶117-126. Mr. Feld urged that the Report address the allegations raised by RCN and the Broadband Service Providers Association

Finally, Mr. Feld observed that more than 11 years after Congress mandated the FCC to establish a horizontal ownership limit, and more than two years since the Commission launched an "expedited" proceeding on remand in *TWE*, the Commission had no horizontal ownership limit in place. As the purpose of the ownership limit is to "enhance effective competition," Section 613(f), it is a travesty for the Commission to release yet another whitewash of the MVPD market while refusing to tak the actions mandated by Congress.

In accordance with Section 1.1206(b), 47 C.F.R. § 1.1206, this letter is being filed

electronically with your office today.

Respectfully submitted

Harold Feld
Associate Director
Media Access Project

cc: Jordan Goldstein